IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.570 OF 2000 .

Oriental Insurance Co. Ltd. : Appellants.

versus

Shri K.M.George Kutty @ Raju

& Anr. : Respondents.

Mr.S.M.Vidyardhi for the appellants.

Mr.G.S.Hegade with Mr.Lokesh for Respondent No.1

CORAM : D.G.DESHPANDE,J.

DATED : 11th APRIL 2005.

ORAL ORDER

1. This appeal is filed by the Insurance Company challenging the order of the tribunal i.e. Motor Accidents Claims Tribunal, Raigad at Alibag dated 28.11.1997 by which compensation to the tune of Rs.2,40,000/- was awarded to the respondent/claimant.

2. Mr.Hegade, appearing for the respondent/claimant, raised preliminary objection to the maintainability of this appeal. He relied upon the judgment of the Supreme Court reported in **2002 ACJ 1950 [National Insurance Co. Ltd. v. Nicolletta Rohtagi & ors.]**. It is with reference to Section 170 of the Motor Vehicles Act, 1988 which provides as;

> **"Section 170 :- Impleading insurer in certain cases** --- Where in the course of any inquiry, the Claims Tribunal is satisfied that--
>
> (a) there is collusion between the person making the claim and the person against whom the claim is made, or
>
> (b) the person against whom the claim is made has failed to contest the claim,
>
> it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the

> proceedings and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of Section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made."

Mr.Hegade therefore contended that when section 170 requires the tribunal to come to a conclusion that either there is a collusion between the person making the claim and the person against whom the claim is made viz. the owner or the driver of the vehicle or, where such person failed to contest the claim to pass a reasoned order directing impleadment of the insurance company. Here in this case the tribunal, before the insurance company filed its written statement, had not passed any order either under sub-section (a) or (b) of section 170 and, therefore, now the insurance company had no right of appeal. In the aforesaid judgment of the Supreme Court this aspect is considered. It is held by the Supreme Court in paras 17, 18, 25 and 26 as under :-

"Para 17. Before proceeding further, it may be noticed that while 'the Motor Vehicles Act, 1939' was in force, section 110-C (2-A) was inserted therein the year 1970 which corresponds to section 170 of the 1988 Act. The said provision provides that in course of an inquiry of a claim if the Tribunal is satisfied that there is a collusion between the claimant and the insured or the insured fails to contest the claim, the Tribunal for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceedings and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made."

Para 18. The aforesaid provisions show two aspects. Firstly, that the insurer has only statutory defences available as

provided in sub-section (2) of section 149 of 1988 Act and, secondly, where the Tribunal is of the view that there is a collusion between the claimant and the insured, or the insured does not contest the claim, the insurer can be made a party and on such impleadment the insurer shall have all defences available to it. Then comes the provisions of section 173 which provides for an appeal against the award given by the Tribunal. Under section 173, any person aggrieved by an award is entitled to prefer an appeal to the High Court. Very often the question has arisen as to whether an insurer is entitled to file an appeal on the grounds available to the insured when either there is a collusion between the claimants and the insured or when the insured has not filed an appeal before the High Court questioning the quantum of compensation. The consistent view of this Court had been that the insurer has no right to file an appeal to challenge the quantum of compensation or findings of the Tribunal as regards the negligence

or contributory negligence of the offending vehicle."

"Para 25. We have earlier noticed that motor vehicle accident claim is a tortious claim directed against tortfeasors who are the insured and the driver of the vehicle and the insurer comes to the scene as a result of statutory liability created under the Motor Vehicles Act. The legislature has ensured by enacting section 149 of the Act that the victims of motor vehicle accidents are fully compensated and protected. It is for that reason the insurer cannot escape from its liability to pay compensation on any exclusionary clause in the insurance policy except those specified in section 149(2) of the Act or where the condition precedent specified in section 170 is satisfied."

"Para 26. For the aforesaid reasons, an insurer, if aggrieved against an award, may file an appeal only on those grounds and no other. However, by virtue of

section 170 of the 1988 Act, where in course of an enquiry the Claims Tribunal is satisfied that (a) there is a collusion between the person making a claim and the person against whom the claim has been made or (b) the person against whom the claim has been made has failed to contest the claim, the Tribunal may, for reasons to be recorded in writing, implead the insurer and in that case it is permissible for the insurer to contest the claim also on the grounds which are available to the insured or to the person against whom the claim has been made. Thus, unless an order is passed by the Tribunal permitting the insurer to avail the grounds available to an insured or any other person against whom a claim has been made on being satisfied of the two conditions specified in section 170 of the Act, it is not permissible to the insurer to contest the claim on the grounds which are available to the insured or to a person against whom a claim has been made. Thus, where conditions precedent embodied in section

> 170 are satisfied and the award is adverse to the interest of the insurer, the insurer has a right to file an appeal challenging the quantum of compensation or negligence or contributory negligence of the offending vehicle even if the insured has not filed any appeal against the quantum of compensation. Sections 149, 170 and 173 are part of one scheme and if we give any different interpretation to section 170 of 1988 Act, the same would go contrary to the scheme and object of the Act."

Therefore, in the background of the aforesaid observations and findings of the Supreme Court, Mr.Hegade contended that the present appeal is not maintainable.

3. As against this, the counsel for the appellants relied upon another judgment of the Supreme Court reported in **2003 ACJ 2107 [United India Insurance Co. Ltd. v. Jyotsnaben Sudhirbhai Patel & ors.]**. In that case the driver and owner of the offending vehicle had not filed written statement and failed to contest the

proceedings. The Insurance company sought permission of the tribunal under Section 170 of the Act to contest the proceedings. The tribunal passed cryptic order granting prayer but had not recorded the reasons. Thereafter, the insurance company cross examined the witnesses; compensation was awarded; insurance company filed an appeal before the High Court, but the same came to be dismissed on the ground other than those enumerated under Section 149(2); same came to be dismissed because the High Court found that the tribunal's order was not a reasoned order. In that background, the Supreme Court held that the appeal is maintainable, because the insurance company was an aggrieved party.

4. This case has to be distinguished to the facts of the present case. Because in that case at least an order granting leave was there, though it was a cryptic order. In the instant case, there is no order at all under Section 170 of the Act. The counsel for the appellants tried to contend that the written statement of the insurance company was accepted and taken on record and it was permitted to cross examine the witnesses. Therefore, it should be taken that

the leave under Section 170 was granted though not specifically and clearly in writing. It is difficult to accept this submission. Because if the law requires the tribunal to pass an order giving reasons as to why insurance company as a necessary party with reference to sub-sections (a) and (b) of Section 170 of the Act, then no such presumption can be drawn that because the insurance company was permitted to file written statement and was allowed to cross examine the witnesses, any deem permission was granted to it. The judgment of the Supreme Court relied upon by Mr.Hegade, appearing for the respondent/claimant is absolutely clear on this point and, therefore, his objection regarding maintainability of appeal has to be upheld. Consequently, the appeal is dismissed. No order as to costs. Certified copy expedited. The respondent/claimant has given bank guarantee. The respondent/claimant has withdrawn the amount against bank guarantee. In view of this order of the appeal, the bank guarantee is allowed to be returned to the respondent/claimant.

[D.G.DESHPANDE]

11/04/2005 JUDGE.